Senate Bill No. 1183

Passed the Senate May 11, 2006

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Secretary of the Senate

Passed the Assembly June 26, 2006

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Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2006, at _____ o'clock ___M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 191 and 710 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1183, Ackerman. Foreign corporations: supermajority vote.

(1) Existing law imposes various requirements on foreign corporations, as defined, that transact intrastate business, as defined. Existing law provides that a foreign corporation is not considered to be transacting intrastate business merely because its subsidiary transacts intrastate business.

This bill would additionally provide that a foreign corporation is not transacting intrastate business merely because of its status as a shareholder, limited partner, or member or manager of a domestic corporation, limited partnership, or limited liability company or a foreign corporation, limited partnership, or limited liability company transacting intrastate business.

(2) Existing law requires, with respect to certain corporations with outstanding shares of record held by at least 100 persons, that an amendment to the articles of incorporation or a certificate of determination that includes a supermajority vote requirement, as defined, shall be approved by a specified proportion of shares. Existing law provides that the supermajority vote requirement is ineffective 2 years after the most recent filing of the amendment or certificate of determination to adopt or readopt the supermajority vote requirement, unless it is renewed, as specified.

This bill would eliminate that provision that the supermajority vote requirement is ineffective 2 years after that specified filing. The bill would make other technical, nonsubstantive, and conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 191 of the Corporations Code is amended to read:

191. (a) For the purposes of Chapter 21 (commencing with Section 2100), “transact intrastate business” means entering into repeated and successive transactions of its business in this state, other than interstate or foreign commerce.

(b) A foreign corporation shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business or merely because of its status as any one or more of the following:

(1) A shareholder of a domestic corporation.

(2) A shareholder of a foreign corporation transacting intrastate business.

(3) A limited partner of a domestic limited partnership.

(4) A limited partner of a foreign limited partnership transacting intrastate business.

(5) A member or manager of a domestic limited liability company.

(6) A member or manager of a foreign limited liability company transacting intrastate business.

(c) Without excluding other activities that may not constitute transacting intrastate business, a foreign corporation shall not be considered to be transacting intrastate business within the meaning of subdivision (a) solely by reason of carrying on in this state any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its board or shareholders or carrying on other activities concerning its internal affairs.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities or depositaries with relation to its securities.

(5) Effecting sales through independent contractors.

(6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance outside this state before becoming binding contracts.

(7) Creating evidences of debt or mortgages, liens or security interests on real or personal property.

(8) Conducting an isolated transaction completed within a period of 180 days and not in the course of a number of repeated transactions of like nature.

(d) Without excluding other activities that may not constitute transacting intrastate business, any foreign lending institution, including, but not limited to: any foreign banking corporation, any foreign corporation all of the capital stock of which is owned by one or more foreign banking corporations, any foreign savings and loan association, any foreign insurance company or any foreign corporation or association authorized by its charter to invest in loans secured by real and personal property, whether organized under the laws of the United States or of any other state, district or territory of the United States, shall not be considered to be doing, transacting or engaging in business in this state solely by reason of engaging in any or all of the following activities either on its own behalf or as a trustee of a pension plan, employee profit sharing or retirement plan, testamentary or inter vivos trust, or in any other fiduciary capacity:

(1) The acquisition by purchase, by contract to purchase, by making of advance commitments to purchase or by assignment of loans, secured or unsecured, or any interest therein, if those activities are carried on from outside this state by the lending institution.

(2) The making by an officer or employee of physical inspections and appraisals of real or personal property securing or proposed to secure any loan, if the officer or employee making any physical inspection or appraisal is not a resident of and does not maintain a place of business for that purpose in this state.

(3) The ownership of any loans and the enforcement of any loans by trustee’s sale, judicial process or deed in lieu of foreclosure or otherwise.

(4) The modification, renewal, extension, transfer or sale of loans or the acceptance of additional or substitute security therefor or the full or partial release of the security therefor or the acceptance of substitute or additional obligors thereon, if the activities are carried on from outside this state by the lending institution.

(5) The engaging by contractural arrangement of a corporation, firm or association, qualified to do business in this state, that is not a subsidiary or parent of the lending institution and that is not under common management with the lending institution, to make collections and to service loans in any manner whatsoever, including the payment of ground rents, taxes, assessments, insurance, and the like and the making, on behalf of the lending institution, of physical inspections and appraisals of real or personal property securing any loans or proposed to secure any loans, and the performance of any such engagement.

(6) The acquisition of title to the real or personal property covered by any mortgage, deed of trust or other security instrument by trustee's sale, judicial sale, foreclosure or deed in lieu of foreclosure, or for the purpose of transferring title to any federal agency or instrumentality as the insurer or guarantor of any loan, and the retention of title to any real or personal property so acquired pending the orderly sale or other disposition thereof.

(7) The engaging in activities necessary or appropriate to carry out any of the foregoing activities.

Nothing contained in this subdivision shall be construed to permit any foreign banking corporation to maintain an office in this state otherwise than as provided by the laws of this state or to limit the powers conferred upon any foreign banking corporation as set forth in the laws of this state or to permit any foreign lending institution to maintain an office in this state except as otherwise permitted under the laws of this state.

SEC. 2. Section 710 of the Corporations Code is amended to read:

710. (a) This section applies to a corporation with outstanding shares held of record by 100 or more persons (determined as provided in Section 605) that files an amendment of articles or certificate of determination containing a "supermajority vote" provision on or after January 1, 1989. This section shall not apply to a corporation that files an amendment of articles or certificate of determination on or after January 1, 1994, if, at the time of filing, the corporation has (1) outstanding shares of more than one class or series of stock, (2) no class of equity securities registered under Section 12(b) or 12(g) of the

Securities Exchange Act of 1934, and (3) outstanding shares held of record by fewer than 300 persons determined as provided by Section 605.

(b) A "supermajority vote" is a requirement set forth in the articles or in a certificate of determination authorized under any provision of this division that specified corporate action or actions be approved by a larger proportion of the outstanding shares than a majority, or by a larger proportion of the outstanding shares of a class or series than a majority, but no supermajority vote that is subject to this section shall require a vote in excess of 66⅔ percent of the outstanding shares or 66⅔ percent of the outstanding shares of any class or series of those shares.

(c) An amendment of the articles or a certificate of determination that includes a supermajority vote requirement shall be approved by at least as large a proportion of the outstanding shares (Section 152) as is required pursuant to that amendment or certificate of determination for the approval of the specified corporate action or actions.

(d) The amendments made to this section by the act amending this section in the 2001–02 Regular Session shall not affect the rights of minority shareholders existing under law.

Approved _____, 2006

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Governor